

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARTIN MARSHAL,

Petitioner,

v.

DANELA AND JOLYNN OLDFIELD,

Respondent.

No. C14-05346 RBL/KLS

ORDER TO FILE A COMPLETE
APPLICATION TO PROCEED IN
FORMA PAUPERIS AND AN AMENDED
HABEAS CORPUS PETITION NAMING
A PROPER RESPONDENT

This petition for a writ of habeas corpus had been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1), Local Magistrate Judge Rules 3 and 4. Petitioner, Martin Marshal, is attempting to challenge a state conviction and sentence. He originally filed the action as a civil rights claim and the Clerk's Office correctly opened the action as a Habeas Corpus petition filed pursuant to 28 U.S.C. § 2254.

The Clerk's Office sent Mr. Marshal a habeas in forma pauperis application and a habeas corpus form petition. Dkt. 2. Mr. Marsahl returned only the first page of the *in forma pauperis* application and when he filled out the form petition he listed his alleged victim and her mother as respondents. Dkt. 3 and 4.

1 Mr. Marshal must start over. The Clerk's Office is directed to send him another
2 packet. Mr. Marshal must fill out and return the entire *in forma pauperis* application. Mr.
3 Marshal also must fill out another habeas corpus petition because alleged victims and their
4 mothers are not the proper party to respond to a federal habeas corpus petition.

5 The proper respondent is "the person having custody of the person detained." 28 U.S.C.
6 § 2243. This person is usually the superintendent of the facility where petitioner, Mr. Marshal, is
7 incarcerated. Mr. Marshal's failure to name the correct party deprives this Court of personal
8 jurisdiction. *See Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994).

10 The Court Orders Mr. Marshal to file an amended petition on the form provided by the
11 Court. The amended petition will act as a complete substitute for the original. The amended
12 petition is due on or before July 11, 2014. Failure to comply with this order will result in a
13 Report and Recommendation that this action be dismissed for failure to comply with a court
14 order and lack of in personam jurisdiction over respondent.

16 The Clerk is directed to mail a copy of this Order to petitioner and note the **July 11,**
17 **2014**, deadline on the court's calendar.

18 Dated this 5th day of June, 2014.

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21 Karen L. Strombom
22 United States Magistrate Judge
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